

Creating and Linking Socio-Economic and Legal Frames: Cicero's *Pro Quinctio*

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Until only recently, Cicero was judged to be an “outsider” to Roman law, a mere advocate mainly using his rhetorical skills rather than any profound legal argumentation. However, in the course of the “cultural turn”, the discourse and practice of law in a broader framework of “legal culture” has also clearly altered our view on Cicero and his legal knowledge.¹ Notwithstanding the new emphasis on the importance of legal practice for creating the late Roman republican “law system”, the question as to how the communication between the orator Cicero and his audience functioned remains a crucial one. As our main source for the legal practice of the late Republic, his speeches are the basis of any discussion about a common Roman “legal culture” and about how it was shaped through the various layers of law (e.g., *leges*, *plebiscita*, *SCa*, and *ius honorarium*, but also *ius civile*, *ius gentium*, and *ius naturale*) forming and conceptualising *ius* at that time, and procedure and communication between the different parties involved in cases. This paper will address this research question by looking at Cicero's earliest extant speech, the *Pro Quinctio*. Therein, the legal performance of the parties as well as their presentation by Cicero, Quinctius' advocate, play a decisive role, and reveal important details as to how controversial business affairs were framed, and finally settled, by law of procedure, particularly the praetorian edict and its formulas. However, it will be further shown that these legal frames in economic affairs were only one part of the story: socio-political, socio-economic, and moral frames were added by Cicero at weak “legal” points, thus forming a net of sub-frames underneath the main legal frame, in order to convince the audience, particularly the judge(s), of his client's rights.

The question as to why I employ the terms “frames” and “framing” throughout the paper for phenomena that have often been called “concepts”, “institutions”, or “morale” is easy to answer. By using the frame-analysis model

1 See esp. P.J. du Plessis, *Cicero's Law. Rethinking Roman Law of the Late Republic* (Edinburgh 2016), with overview of recent scholarship in the ‘Introduction’, 1–7. Cf. already J.W. Tellegen, ‘Oratores, Iurisprudentes and the «Causa Curiana»’, *Revue Internationale des droits de l'antiquité* 30 (1983), 293–311, here: 293–295.

deriving from sociology, communication studies, and psychology, foremost the work of Erving Goffman, Charles J. Fillmore, and Marvin Minsky, I address the communication between an author/orator and the targeted audience via the work (the only part nowadays extant). I assess the respective text not as a fixed, but rather as a flexible and mutually interdependent negotiation process and permanently renewed discourse about experiences and expectations based on shared frames linking both sides. However, those frames and the single elements of which they consist (which can also be termed frames, but function as sub-frames in that very context) might be moulded and (on account of their disparate attributes) be related in various ways through the different slots which they offer.² To make a long (theoretical) story short for the purpose of this present paper, an orator like Cicero can reach and influence his audience much better if he anchors his discourse/speech in pre-existing frames of experience and expectation with respect to various conceptual layers, such as legal notions, principles of juristic exegesis, feelings of justice, socially accepted behaviour, or shared moral views and related emotions. Additionally, within the procedure of a specific case, such as *in iure* (i.e., the drawing up and framing of the concrete procedural *formula* in accordance with the praetor's edict), the parties involved also conferred over every detail to be included in the *formula* because every single word could become useful, and decisive, for the argumentation later on *apud iudicem*.³ In this way, legal terms and wordings form a "strong"

2 On frame analysis, see E. Goffman, *Frame Analysis. An Essay on the Organization of Experience* (Cambridge, MA 1974), but also C.F. Fillmore, 'Frame semantics and the nature of language', *Annals of the New York Academy of Sciences* 280 (1976), 20–32, and M. Minsky, 'A framework for representing knowledge', in: D. Metzger (ed.), *Frame Conceptions and Text Understanding* (Berlin 1980), 1–25. On frames in linguistics, see D. Busse, *Frame Semantik. Ein Kompendium* (Berlin 2012). On its recent, but still less than commonplace use in *Altertumswissenschaften*, see, e.g., S. Günther, '(K)einer neuen Theorie wert? Neues zur Antiken Wirtschaftsgeschichte anhand *Dig.* 50,11,2 (Callist. 3 cognit.)', *Gymnasium* 124 (2017), 131–144; T. Georgakopoulos, 'A frame-based approach to the source-goal asymmetry. Synchronic and diachronic evidence from ancient Greece', *Construction and Frames* 10 (2018), 61–97; E. Günther, 'Mehrdeutigkeiten antiker Bilder als Deutungspotenzial. Zu den Interdependenzen von Affordanzen und *frames* im Rezeptionsprozess', in E. Günther and J. Fabricius (eds.), *Mehrdeutigkeiten. Rahmentheorien und Affordanzkonzepte in der archäologischen Bildwissenschaft*. Philippika 147 (Wiesbaden 2021), 1–40. Modern legal concepts and language are accessed via frame analysis in D. Busse, M. Felden, and D. Wulf, *Bedeutungs- und Begriffswissen im Recht. Frame-Analysen von Rechtsbegriffen im Deutschen* (Berlin 2018). On ancient legal language (in Ovid), see S. Günther, 'More than a mere illustration!? Legal language in Ovid's *Remedia Amoris*', in Xu Xiaoxu and Wang Daqing (eds.), *New World History* (Beijing 2019), 136–155.

3 On the two-step formulary procedure, see M. Kaser, *Das römische Zivilprozessrecht*. Handbuch der Altertumswissenschaft. Rechtsgeschichte des Altertums III/4 (Munich 1966), 107–

and complex frame within a network of inter-related frames, and automatically direct the parties to link their respective argumentation to it.⁴

However, this complexity of ancient law did not mean that modifications and changes to the frames used were impossible. Not only so-called institutions such as *mos maiorum* or *amicitia*, but even “legal” terms like *ius* or *iniuria* were not fixed conceptions, but rather open concepts that could be informed with situational content of the sort that would not break the basic framework of the respective term. It was exactly the art of the orator to adjust these frames to his argument while at the same time to remain within the main conceptual lines which determined the success or failure of a speech, here Cicero’s *Pro Quinctio*.⁵

338. Especially on the negotiation due to the complexity of the formulary procedure before and *in iure*, see E. Metzger, ‘Republican civil procedure. Sanctioning reluctant defendants’, in P. du Plessis, C. Ando, and K. Tuori (eds.), *The Oxford Handbook of Roman Law and Society* (Oxford 2016), 245–256. See Cic. *Part.* 28.99 (H. Rackham (trans.), *Cicero. On the Orator: Book 3. On Fate. Stoic Paradoxes. Divisions of Oratory*. Loeb Classical Library 349 (Cambridge, MA 1942)): *Atque etiam ante iudicium de constituendo ipso iudicio solet esse contentio, cum aut sitne actio illi qui agit aut iamne sit aut num iam esse desierit aut illane lege hisne verbis sit actio quaeritur. Quae etiamsi ante quam res in iudicium venit aut concertata aut diiudicata aut confecta non sunt, tamen in ipsis iudiciis permagnum saepe habent pondus cum ita dicitur: plus petisti; sero petisti; non fuit tua petitio; non a me, non hac lege, non his verbis, non hoc iudicio.* / “And even before the trial begins there is usually a dispute about the institution of the trial itself, when the question is raised whether the party taking proceedings has the right to do so, or has the right to do so yet, or has now ceased to have it, or whether action is open to him under the law cited, or in the terms employed. And even if these questions have not been raised or decided or settled before the case comes into court, nevertheless they often carry very great weight during the actual proceedings, when the statement is advanced, ‘You have sued for an excessive amount,’ or ‘You have taken proceedings too late,’ or ‘The suit was not one for you to institute,’ or ‘I was not the party to be sued,’ or ‘not under this law,’ or ‘not in this form of words,’ or ‘not before this court.’” Cf. also Cic. *Inv.* 2.19.57–58 (see below). On the development from the *legisactio* to the formulary procedure, see also the chapter by Philip Kay in this volume.

4 See esp. Busse, Felden, and Wulf 2018, op. cit. (n. 2), 10–17.

5 The amount of scholarship on this speech cannot be reviewed here. See the comprehensive treatment in J. Platschek, *Studien zu Ciceros Rede für P. Quinctius*. Münchener Beiträge zur Papyrusforschung und antiken Rechtsgeschichte 94 (Munich 2005). We do not know the outcome of the case of Naevius vs. Quinctius. It was published by Cicero himself later, but not further mentioned, and not counted among the speeches that supplied his glory as orator (cf. Tac. *Dial.* 37.6). On the question, see Platschek, op. cit., 8f. (with further literature). On the dissolution procedure as mirrored in the speech, see Platschek, op. cit., 13–30. On issues of transferring shares in *societates*, see also the chapter of Boudewijn Sirks in this volume.

1 The Background: Quinctius and Naevius—a Never-Ending Partnership

In his earliest extant speech held in the autumn of 81 BCE, Cicero defends Publius Quinctius in a *sponsio* in which he must prove that his opponent, Sextus Naevius, had not taken (full) possession of his client's property, mainly in Gaul, in accordance with the edict of the praetor Burrienus in 83 BCE, for the required period of thirty days. This pre-judgment became a necessary step within a complex case beginning as a conflict about the dissolution of a business partnership (a *societas*) in Gaul which Naevius had together with Quinctius, who had inherited it from his brother Gaius in c. 85 BCE. After much back and forth, especially in the form of *vadimonia saepe dilata* (Cic. *Quinct.* 5.22; 14.46), the dispute seemed to have been settled by auction (Cic. *Quinct.* 6.23). Yet, during the absence of Quinctius who inspected the estate in Gaul, Naevius called another meeting, a new *vadimonium* which Quinctius missed due to his travel while Naevius let his absence be attested by witnesses. Shortly afterwards, he approached the then-praetor Burrienus and received the *missio in possessionem* of Quinctius' property. Consequently, Naevius took possession of Quinctius' property in Rome, where he was opposed by Sextus Alfenus, procurator of Quinctius and simultaneously *familiaris* and *propinquus* of Naevius, while Quinctius was thrown out of a common property in Gaul by slaves of the *societas*. Meanwhile, with the help of a plebeian tribune, Alfenus achieved a new *vadimonium* appointment with the promise of Quinctius being present. This *vadimonium* appointment was not enforced by Naevius for one and a half years until the time of Sulla's proscriptions in 81 BCE. During these Alfenus was murdered. His property was auctioned off and acquired by Naevius, who called Quinctius his partner at that moment. However, already in March 81 BCE while Alfenus was still alive, Naevius had summoned Quinctius before the then-praetor Gnaeus Dolabella. This is the first situation which we shall examine in detail.

2 The Drawing Up of the Formula: Disguising the Failed Negotiation

Cicero describes the meeting of Quinctius and Naevius at the praetor as follows (Cic. *Quinct.* 8.30–31):⁶

6 The text is taken from M.D. Reeve (ed.), *M. Tulli Ciceronis scripta quae manserunt omnia. Fasc. 7: Oratio pro P. Quinctio* (Stuttgart and Leipzig 1992), adjustments following the manuscripts

Venit Romam Quinctius, uadimonium sistit. Iste homo acerrimus, bonorum possessor expulsor ereptor, annum et sex menses nihil petit; quiescit; conditionibus hunc quoad potest producit; a Cn. Dolabella denique praetore postulat ut sibi Quinctius iudicatum solui satis det ex formula quod ab eo petat quoniam eius⁷ ex edicto praetoris bona dies xxx possessa sint. Non recusabat Quinctius quin ita satis dare iuberet si bona possessa essent ex edicto. Decernit quam aequum nihil dico: unum hoc dico, nouum, et hoc ipsum tacuisse mallet, quoniam utrumque quiuis intellegere potuisset. Iubet P. Quinctium sponsonem cum Sex. Naeuio facere si bona sua ex edicto P. Burrieni praetoris dies xxx possessa non essent. Recusabant qui aderant tum Quinctio; demonstrabant de re iudicium fieri oportere, ut aut uterque inter se aut neuter satis daret; non necesse esse famam alterius in iudicium uenire. (31) Clamabat porro ipse Quinctius sese idcirco nolle satis dare ne uideretur iudicasse bona sua ex edicto possessa esse; sponsonem porro si istius modi faceret, se (id quod nunc euenit) de capite suo priore loco causam esse dicturum. Dolabella, quem ad modum solent homines nobiles seu recte seu perperam facere coeperunt (ita in utroque excellunt ut nemo nostro loco natus assequi possit), iniuriam facere fortissime perseuerat: aut satis dare aut sponsonem iubet facere, et interea recusantes nostros aduocatos acerrime submoueri.

Quinctius returns to Rome, and appears to his bail. This Naeuius, a most violent fellow, who had taken possession of the property, had driven Quinctius out and robbed him of it, for eighteen months made no claim, kept quiet, amused Quinctius as long as he could with proposals for coming to terms, and finally applied to the praetor Gnaeus Dolabella that Quinctius should give him security for payment of the judgement according to the formula: IN THAT HE IS CLAIMING FROM ONE BECAUSE HIS⁸ GOODS HAVE BEEN POSSESSED FOR THIRTY DAYS ACCORDING TO THE PRAETOR'S EDICT. Quinctius did not object to an order

are marked. The translation is taken from J.H. Freese (trans.), *Cicero, in Twenty-Eight Volumes. Vol. VI: Pro Publio Quinctio—Pro Sexto Roscio Amerino—Pro Quinto Roscio comoedo—De lege agrarian I, II, III. With an English Translation.* Loeb Classical Library 240 (Cambridge, MA and London 1984), also in the following, albeit adapted and marked where the Latin text reads different from his.

- 7 Reeve 1992, op. cit. (n. 6), ad loc. has defended the conjecture “cuius”, but see Platschek 2005, op. cit. (n. 5), 97–110, esp. 105–106 who convincingly argues for keeping “quoniam eius.”
- 8 I translate “because his” instead of Freese’s “whose”, see n. 7. I keep the capital writing although Platschek *ibid.* made it likely that the wording of Naeuius does not resemble the correct legal phrasing at least in part.

being made that he should give security, IF HIS GOODS HAD REALLY BEEN POSSESSED IN ACCORDANCE WITH THE EDICT.⁹ The praetor gave a decision—how far equitable, I say nothing about that; I only say this, that it was an innovation, and I should have preferred to remain silent upon this point, since anyone could understand it, regarded from either point of view—and ordered Quinctius to enter into an engagement with Naevius on the question: WHETHER HIS GOODS HAD NOT BEEN POSSESSED FOR THIRTY DAYS according to the edict of Publius Burrienus the praetor. Quinctius's supporters demurred; they pointed out that the trial ought to deal with the real question, so that either both parties or neither of them should give security; that there was no need for the reputation of either being put on trial. (31) Further, Quinctius himself emphatically declared that his reason for being unwilling to give security was to avoid the appearance of himself thereby giving a verdict that his goods had been possessed in accordance with the edict; moreover, if he made an “engagement” of the kind asked for, he would be obliged to plead first in a matter affecting his civil rights, as has happened to-day. Following the practice of members of the nobility, who, when once they have begun to carry out some plan, whether right or wrong, show such superiority in its execution that is beyond the reach of one in our humble position, Dolabella most manfully persevered in acting wrongfully; he ordered that either security must be given or an engagement entered into, and in the meantime caused our advocates who protested to be forcibly removed from the court.

Of course, Cicero first attacks Quinctius' opponent Naevius by pointing out his morally questionable behaviour due to his actions against Quinctius in the years before, and due to his delaying the judicial procedure for a year and a half (*Iste homo acerrimus, bonorum possessor expulsor ereptor, annum et sex menses nihil petit; quiescit; condicionibus hunc quoad potest producit*). However, Cicero then turns to the legal aspect, the negotiations about drawing up the formula at the praetor. Modern researchers of law have intensively discussed the actual formula written in the manuscripts, and have tried to explain (or conjecture) the wording of the text. While this is worthwhile for the reconstruction of the praetorian edict and the legal development in the late Roman Republic,¹⁰ it is

9 I write it in capitals, and “possessed” without quotation marks, as I argue below that it is the wording which Quinctius proposed as counterplea.

10 A comprehensive summary with an own solution is given by Platschek 2005, op. cit. (n. 5), 95–126.

important for our perspective on the frames rather to look at the structuring of the whole passage by Cicero.

Naevius proposes that Quinctius shall perform the *satisfatio iudicatum solvi*, that is to offer in form of a *stipulatio*, specifically a *cautio*, to pay the debt if he lost case, secured by a personal guaranty by a *sponsor* (surety). The exact wording (*ex formula*) follows; however, it remains debated as to whether those are the words of Naevius whom Cicero mocks, or, at least partly, of the edict.¹¹ Now, Quinctius reacted by repeatedly proposing (*non recusabat*; imperfect!) his alternative wording *quin ita satis dare iuberet si bona possessa essent ex edicto*. In fact, he refuses the wording of Naevius already assuming the legal possession of Quinctius' goods by him, and instead insists several times to include a condition (i.e., "if his goods had been possessed (by Naevius) according to the edict") that would first have to be proven by Naevius, and thus would totally change the course of action.¹² This struggle over the correct wording and the correct exception (*exceptio*) which finds approval by the praetor,¹³ in order to turn the case in one's own favour is already emphasised in Cicero's earliest extant work, *De Inventione*, written shortly before the case against Quinctius (Cic. *Inv.* 2.19.57–58):¹⁴

Nam et praetoris exceptionibus multae excluduntur actiones et ita ius civile habemus constitutum, ut causa cadat is, qui non quemadmodum oportet egerit. (58) Quare in iure plerumque versantur. Ibi enim et exceptiones postuluntur et agendi potestas datur et omnis conceptio privatorum iudiciorum constituitur.

For many actions are excluded by the *exceptiones* (counter-pleas) granted by the praetor, and the provisions of our civil law are such that one

11 See Platschek 2005, op. cit. (n. 5), 97–110 who discusses the extensive debates among legal scholars, and argues for the wording of Naevius, and Cicero imitating him here.

12 Cf. Platschek 2005, op. cit. (n. 5), 111f.

13 See A. Berger, *Encyclopedic Dictionary of Roman Law* (Philadelphia 1953), 458, s.v. *Exceptio*: "A defense opposed by the defendant to the plaintiff's claim to render it ineffective and exclude the defendant's condemnation as demanded by the plaintiff in the *INTENTIO* of the procedural formula. ... The defendant's objection made during the proceedings *in iure*, is inserted into the formula as a negative condition, to wit, the judge may condemn the defendant 'if there has not been an agreement that the plaintiff will not bring an action.' ... Some exceptions are an integral part of the interdict ..., others were inserted in a specific case by the praetor upon the request of the defendant."

14 Trans. M.H. Hubbell (trans.), *Cicero. On Invention. The Best Kind of Orator. Topics*. Loeb Classical Library 386 (Cambridge, MA 1949).

who does not bring his action in the proper form loses his suit (58) Therefore such questions generally are disposed of *in iure* (before the praetor). For it is there that exceptions are requested and right of action is granted, and the complete formula for the guidance of the trial of private (or civil) actions is drawn up.

So the response by Quinctius is not just a manner of friendly refusal (as the words of Cicero using a litotes (*non recusabat*) might suggest), but rather the repeated attempt to alter the formula with which Quinctius as the defendant would have better chances in the following procedural step *apud iudicem*. However, the praetor Dolabella approves neither wording but draws up a formula that should start a different procedural step: a *sponsio praeiudicialis*, a preliminary procedure in which both parties must argue over the possession of Quinctius's property according to the following words: *si bona sua ex edicto P. Burrieni praetoris dies xxx possessa non essent*. From Cicero's harsh moral judgment about this act of the praetor (*decernit quam aequum nihil dico: unum hoc dico, nouum*) as well as from the repeated reaction of Quinctius' attendants (*recusabant / demonstrabant*), it becomes clear that this decision was not the result which Quinctius expected: with this wording, he would be in the necessity to prove that Naevius had not possessed his property for thirty days according to the praetor Burrienus' edict.¹⁵ Platschek has convincingly argued that this proposal by the praetor took the fact, i.e., that Naevius possessed property of Quinctius, into account but was actually a kind of compromise. So, the *novum* Cicero attacks here was an exception granted by the praetor to Quinctius, and not the unfavourable distribution of the party roles which is so heavily criticised by Quinctius, his attendants and Cicero.¹⁶ Hence, the party roles remained, in fact, unchanged compared with the *satisdatio* proposal of Naevius since the praetor only allowed for the *sponsio praeiudicialis*, and it can be supposed that Naevius' position was stronger at that very moment in front of Dolabella than that of Quinctius. However, the praetor tried to find a possible frame in which Quinctius could somehow obtain the chance to successfully refute the condition before risking all in the *satisdatio iudicatum solvi* and totally losing his face, reputation, and the case.

From the perspective of framing, one can observe here at least seven levels:

- 1.) Naevius' attempt to formulate the case in his favour with the *satisdatio* formula as he was in a stronger position than Quinctius;

15 On the question of whether the thirty days were really specified in the praetor's edict (as in the *sponsio praeiudicialis*), see Platschek 2005, op. cit. (n. 5), 113–119.

16 See Platschek 2005, op. cit. (n. 5), 119–126.

- 2.) Quinctius' attempt to frame it with the *exceptio* which would have brought him into a better starting position *apud iudicem*.
- 3.) Dolabella's compromise with the newly formulated condition in a new procedural format, where he had to respect the strong position of Naevius, but also offered a possibility for Quinctius to further negotiate, save face, or even to refute the condition.
- 4.) The attempt(s) (Latin imperfect!) of Quinctius' attendants to convince the praetor of re-formulating the *satisfatio* in an equal way.
- 5.) The attempt(s) (imperfect again) of Quinctius to explain his refusal of the *satisfatio* and the problems he had with the *sponsio praeiudicialis* proposed by the praetor.
- 6.) The decisive either-or-proposal of the praetor whereupon Quinctius chooses the *sponsio praeiudicialis* as the better solution for him (*id quod nunc euenit*), and finally
- 7.) Cicero's framing by narrating the whole process into his intended direction.

The last is now the most interesting, as it shows us how Cicero works, and what he cannot alter. For, he can neither change the actual process that has already happened, nor the compromise proposed by the praetor; he must follow these legal frames, and is also not allowed to lie about the legal content. What he can do, however, is to select the sub-elements connected with the strong and momentarily dominant legal frames (here: the *satisfatio* proposal of Naevius and the *sponsio praeiudicialis* formula proposed by the praetor) and to link them with social and moral judgments. Indeed, he does precisely so. He (1) embeds Naevius' proposal in a moral characterisation of Quinctius' opponent (see above), and maybe (depending on the (non-)legal language used by Naevius) even mocks his wording.¹⁷ He then (2) depicts Quinctius as being not unwilling if the exception is granted which would, in fact, have totally changed the case (the latter naturally left unspoken by Cicero). The compromise proposed by the praetor Dolabella is (3) not described as being an improvement of Quinctius' quite weak position, but rather as unfavourable: the term *aequum*, which in combination with *quam ... nihil dico* alleges the deficit of a correct balance so vital in Roman legal thinking in this dynamic equilibrium,¹⁸ is applied to a situ-

17 For the likely wrong wording by Naevius, cf. Platschek 2005, op. cit. (n. 5), 110.

18 See G. Schieman, 'Aequitas', in *Der Neue Pauly* 1 (1996), 188–189. Esp. emphasised by Cicero in our speech in *Quinct.* 14.45–46: *Quis tandem nobis ista iura tam aequa discribit? Quis hoc statuit, quod aequum sit in Quinctium, id iniquum esse in Naevium? ... (46) Inveniri ratio, C. Aquili, non potest, ut ad suum quisque quam primum sine cuiusquam dedecore,*

ation where, in fact, there is no balance since Quinctius is in a weaker position. This, of course, must be concealed by the advocate; with its clearly negative connotation in politico-legal terminology,¹⁹ the term *novum* is also used, and could be even agreed upon by both parties (*non aequum* could even have been used by Naevius, who might have felt disappointed in having to give in to the compromise). Here, however, Cicero uses the term to present something as negative for Quinctius, which, in fact, was not, and thus attempts to dominate the discourse by means of it. By keeping silent about further details (*et hoc ipsum tacuisse mallet, quoniam utrumque quiuis intellegere potuisset*), he stresses the negative effect for his defendant. More likely, however, he refrains from further elaboration as he would then have to admit the favourable position which the *novum* brought to his party. (4) Both reactions from Quinctius' side mix legal arguments with socio-moral frames as they allege that the legal formula is not *de re*, but *de fama*, and even *de capite* of Quinctius, two highly political terms for the Roman elite.²⁰ Finally (5), Dolabella is attacked by linking his final decision to his group membership, the *nobiles* with their stubborn, inflexible behaviour (*Dolabella, quem ad modum solent homines nobiles ... coeperunt ... perseverat*; note the intentional change of plural and singular to align Dolabella and his group, the *nobiles*), and thus, at least here, is depicted as socially harmful (*iniuriam*); finally, by acting *acerrime* while removing Quinctius' attendants, Dolabella is somehow equated with Naevius and his behaviour at the beginning of the passage (*acerrimus*) so as to depict him as totally partial. With this, Cicero especially targets the judging audience, the then-praetor C. Aquilius Gallus and his *consilium*.²¹ Aquilius was one of the most famous jurists of his time, though

infamia pernicieque perveniat? ... qui (sc. Naevius), cum revocetur ad id iudicium, unde haec nata sunt omnia, condicionem aequissimam repudiet, fateatur se non pecuniam, sed uitam et sanguine petere / "Who is it, I ask, who imposes upon us such equitable terms? Who has decided that what is fair for Quinctius is unfair for Naevius? ... (46) Cannot some way be found, Aquilius, whereby each of the parties may come into his own without bringing disgrace, infamy, and ruin upon the other? ... who (sc. Naevius), when he is brought back to trying the question which is the origin of all the rest, rejects the most equitable terms, thereby virtually admitting that it is not my client's money but his life-blood that he is seeking"

19 See *OLD* s.v. *nouus*, 1316 f. with references.

20 For *fama* (and *existimatio*) as an important concept for the self-identity of Roman *nobilitas*, see K.-J. Hölkamp, *Die Entstehung der Nobilität. Studien zur sozialen und politischen Geschichte der Römischen Republik im 4. Jhd. v.Chr.* (Stuttgart 1987), 216–218. For *de capite* as threatening of a person's life, see *TLL* III s.v. *caput*, IV.A.1a–b, 416, l. 31–420, l. 26.

21 On the question as to whether only C. Aquilius Gallus and his *consilium* or a broader public were present, see Platschek 2005, op. cit. (n. 5), 4–6.

not belonging to the *nobilitas* in the sense of long senatorial and consular tradition of his family, and (most importantly) someone with a clear idea of what belongs to a legal frame and what not, should we believe the *bon mot* in Cicero's *Topica*.²²

Although he cannot leave the legal frame with its strong authority deriving from a common public understanding of the importance of the rule of law as well as the *potestas* of the magistrate, the praetor, Cicero tries to soften and undermine it at its allegedly weak elements: that the frame already decides about the party roles, and is thus a mirror of the power relations between the

22 On C. Aquilius Gallus, see W. Kunkel, *Die römischen Juristen. Herkunft und soziale Stellung*. Unveränderter Nachdruck der 2. Auflage von 1967 mit einem Vorwort von D. Liebs (Cologne, Weimar and Vienna 2001), 21f. (Nr. 35); still essential is the *RE*-article by E. Klebs and P. Jörs, 'C. Aquilius Gallus', *RE* 11/1 (1895), 327–330; also B.W. Frier, *The Rise of the Roman Jurists. Studies in Cicero's Pro Caecina* (Princeton 1985), 140–155. On his legal way of thinking, see Cic. *Top.* 51 (trans. T. Reinhardt (ed.), *Marcus Tullius Cicero: Topica. Edited with Translation, Introduction, and Commentary*. Oxford Classical Monographs (Oxford 2003)): *Ac loci quidem ipsius forma talis est. Admonet autem hic locus, ut quaeratur quid ante rem, quid cum re, quid post rem evenerit. Nihil hoc ad ius; ad Ciceronem, inquit Gallus noster, si quis ad eum quid tale rettulerat, ut de facto quaereretur. Tu tamen patiere nullum a me artis institutae locum praeteriri; ne, si nihil nisi quod ad te pertineat scribendum putabis, nimium te amare videare. Est igitur magna ex parte locus hic oratorius non modo non iuris consultorum, sed ne philosophorum quidem.* | "This indeed is the form the Place itself takes. And it instructs us to enquire what happened before, contemporaneously with, or after the event. 'This has nothing to do with the law—it's Cicero's business,' our Gallus used to say if someone had brought before him such as a matter as turned out to be a question of fact. Nevertheless, you must allow me not to leave out a single Place belonging to the theory; for if you think nothing should be written which is not of direct concern to you, I fear you may be thought to be rather too fond of yourself. Now this rhetorical Place is for the most part not only not the province of jurisconsults, but not even of philosophers." See Reinhardt 2003, op. cit., 305 (ad loc.) for explanatory commentary. Cf. also Frier 1985, op. cit., 147: "... Both lawsuits hinged on highly technical procedural questions, with which Aquilius was obviously comfortable." Based on this (although later) observation one could argue that Cicero alludes to Aquilius' critical view of forensic oratory and all performance of influence outside the legal sphere right from the beginning. Cf. Cic. *Quinct.* 1.1: *Quae res in ciuitate duae plurimum possunt, eae contra nos ambae faciunt in hoc tempore: summa gratia et eloquentia. Quarum alterum, C. Aquili, uereor, alteram metuo. Eloquentia Q. Hortensi ne me in dicendo impediatur non nihil commoueor; gratia Sex. Naeui ne P. Quinctio noceat, id vero non mediocriter pertimesco.* | "Two things which have most power in the state—I mean great influence and eloquence—are both working against us to-day; the one, Gaius Aquilius, fills me with apprehension, the other with dread. That the eloquence of Quintus Hortensius may embarrass me in my pleading is a thought that causes me some disquietude; that the influence of Sextus Naevius may injure the cause of Publius Quinctius—of that I am gravely afraid." N.B. the parallelisation of Cicero and Quinctius in comparison with the alleged "stronger" and "more influential" orator Q. Hortensius Hortalus and Naevius.

parties involved; and that it is drawn up by a person with other controversial political, social, and moral frames, and contrary to his role as (at least for jurists) desirable objective and “pure” legal institution for framing the case.

3 Cicero’s Use of the Legal Frame

One can now observe exactly this strategy of attacking the weak elements of the legal frame throughout the whole speech. He does it in three steps, as he points out after the narration of the case, in the *partitio* (Cic. *Quinct.* 10.36):

Negamus te bona P. Quincti, Sex. Naevi, possedissee ex edicto praetoris. In eo sponsio facta est. Ostendam primum causam non fuisse cur a praetore postulares ut bona P. Quincti possideres, deinde ex edicto te possidere non potuisse, postremo non possedissee. Quaeso, C. Aquili uosque qui estis in consilio, ut quid pollicitus sim diligenter memoriae mandetis; etenim rem facilius totam accipietis, si haec meminertis, et me facile vestra existimatione revocabitis, si extra hos cancellos egredi conabor quos mihi ipse circumdedi. Nego fuisse causam cur postuleret, nego ex edicto possidere potuisse, nego possedissee. Haec tria cum docuero, peroraro.

We deny, Sextus Naevius, that you have taken possession of the goods of Publius Quinctius in accordance with the praetor’s edict. That is the question in regard to which the “engagement” was made. I will first prove that you had no grounds for applying to the praetor to authorize you to take possession of the goods; next, that you could not have taken possession of them in accordance with the edict; lastly, that you did not possess them at all. I beg you, Aquilius, and you his assessors, carefully to commit to memory the promise I have made; for, if you bear these points in mind, you will find it easier to understand the whole matter, and, as to myself, you will, by your influence, easily call me back, if I endeavour to pass beyond these barriers by which I have voluntarily confined myself. I deny that Naevius had any grounds for his application; I deny that he could have taken possession of the goods in accordance with the edict; I deny that he did take possession of them at all. When I have proved these three assertions, I will conclude.

Important here is Cicero’s remark: “if I endeavour to pass beyond these barriers by which I have voluntarily confined myself” (*si extra hos cancellos egredi conabor quos mihi ipse circumdedi*). In fact, these are not his voluntarily chosen

boundaries, but rather the legal frame and the expectation that the judging audience requires from him to link his argument to legal points. His free decision is only that he targets the three points which he mentions throughout his speech. However, he naturally applies the same strategy in each part (the third part on the question as to whether Naevius did take possession of Quinctius' property at all, is, however, lost, but can be partly reconstructed through the peroration):²³ legal arguments are connected with socio-economic and moral judgments about Naevius and Quinctius, in favour of the latter.

Without having the possibility to examine the whole speech here in detail, I nonetheless argue that one can observe a similar arrangement of arguments by Cicero as in the narration about the drafting of the formula for the process. Targeting the judges, particularly Aquilius, he first of all intentionally uses juristic interpretation principles (unlike in many other cases, for instance, in *Pro Cluentio*, wherein he rarely argues with mere legal terminology, but foremost uses socio-moral language²⁴), and brings in socio-economic and moral elements through the backdoor by pointing to the unevenness of both former juridical decisions and persons involved.

One example suffices to show Cicero's strategy. In attacking Naevius' taking possession of Quinctius' property, he alleges that Naevius did so against the praetorian edict.²⁵ For this reason, he quotes from the edict, and, in our passage here, connects this skilfully with his own insertions directing the audience towards a strict juristic interpretation of the mere wording (Cic. *Quinct.* 27.84):

Omnia sunt, C. Aquili, eius modi quibus ut perspicere possit in hac causa improbitatem et gratiam cum inopia et ueritate contendere. Praetor te quem ad modum possidere iussit? Opinor, ex edicto. Sponsio quae in verba facta est? SI EX EDICTO PRAETORIS BONA P. QVINCTI POSSESSA NON SVNT. Redeamus ad edictum. Id quidem quem ad modum iubet possidere? Numquid est causae, C. Aquili, quin, si longe aliter possedit quam praetor edixit, iste ex edicto non possederit, ego sponsione vicerim? Nihil, opinor. Cognoscamus edictum. QVI EX EDICTO MEO IN POSSESSIONEM VENERINT. De te loquitur, Naevi, quem ad modum tu putas; ais enim te ex edicto venisse; tibi quid facias definit, te instituit, tibi praecepta dat. EOS ITA VIDETVR IN POSSESSIONE ESSE OPORTERE. Quo modo? QVOD

23 Cf. Platschek 2005, op. cit. (n. 5), 267.

24 A thesis on frames and framing in Cicero's *Pro Cluentio* has been successfully defended by the author's PhD-student Zhang Hongxia in June 2021.

25 On the complex questions related to the edict's details in this respect, see Platschek 2005, op. cit. (n. 5), 147–266.

IBIDEM RECTE CVSTODIRE POTERVNT, ID IBIDEM CVSTODIANT; QVOD NON POTERVNT, ID AVFERRE ET ABDVCERE LICEBIT. Quid tum? DOMINVM, inquit, INVITVM DETRVDERE NON PLACET. Eum ipsum qui fraudandi causa latitet, eum ipsum quem iudicio nemo defenderit, eum ipsum qui cum omnibus creditoribus suis male agat, invitum de praedio detrudi vetat.

All these facts, Gaius Aquilius, are of such a kind that anyone can clearly see that in this cause rascality and influence are contending against helplessness and integrity. How did the praetor order you to take possession? According to his edict, I suppose. In what terms was the “wager” or “engagement” drawn up? IF THE GOODS OF PUBLIUS QUINCTIUS HAVE NOT BEEN TAKEN POSSESSION OF ACCORDING TO THE PRAETOR'S EDICT. To return to the edict. In what manner does it order possession to be taken? If Naevius took possession in quite a different way from what the praetor ordered, can it be disputed that he did not take possession according to the edict, and that I have won the wager? Certainly not, I imagine. Let us examine the edict. THOSE WHO HAVE ENTERED INTO POSSESSION ACCORDING TO MY EDICT. He is speaking of you, Naevius, according to your idea, for you say that you entered into possession according to the edict, which defines what you are to do, and gives you instructions and directions. IT PLEASURES US THAT THEY SHOULD BE IN POSSESSION IN THE MANNER FOLLOWING. In what manner? WHAT THEY CAN SAFELY GUARD UPON THE SPOT LET THEM GUARD THERE; WHAT THEY CANNOT, IT SHALL BE LAWFUL TO CARRY OFF AND DRIVE AWAY. What next? TO EJECT THE OWNER AGAINST HIS WILL DOES NOT PLEASE US. Even the man who keeps out of the way with fraudulent intent, even the man whom nobody has defended in his trial, even the man who acts with bad faith towards all his creditors, cannot be ejected from his property against his will.

Firstly, by addressing the praetor and judge C. Aquilius in the vocative, Cicero ascribes two different moral categories to the opposing parties, *improbitas* and *gratia* to that of Naevius, Quinctius holding *inopia* and *veritas*. Then, he changes the focus and talks directly to Naevius, although he certainly still arouses the attention of Aquilius with *praetor te*. Starting from the wording of the *sponsio*, he then proposes the frame, i.e., that he will win the case if the possession was taken by Naevius *longe aliter* than the edict orders. He strongly emphasises that Naevius must strictly follow the procedure of taking possession as described in the edict (*definit ... instituit ... praecepta dat*), then he goes

through the edict, from which he quotes certain formulae and gives short comments. The first two edict-phrases are each bridged by two short questions (*quo modo? ... quid tum?*); only the third on the prohibition of violent ejection of the owner receives a strong commentary. Here, he applies a very narrow legal interpretation of the phrase according to the exact wording, for which he argues that any owner, even a fraudulent one, is not allowed to be ejected against his will. With this, he clearly targets Aquilius and the other legal experts; at least the former argued in this way according to Cicero (Cic. *Top.* 51; see above, n. 22), and so we can suppose that he also favoured such an interpretation of the edict words. To strengthen his argumentation, he even provides a (fictional) quote of the ordering praetor in the following (Cic. *Quinct.* 27.85):

Profiscenti tibi in possessionem praetor ipse, Sex. Naevi, palam dicit: "Ita possideto, ut tecum simul possideat Quinctius, ita possideto, ut Quinctio vis ne afferatur."

When you set out to take possession, Sextus Naevius, the praetor himself openly told you: "You may take possession in such manner that Quinctius may have possession with you at the same time; you may take possession in such a manner that no violence be offered to Quinctius."

Here, the difference between *possideto* (two times used for Naevius) and *possideat* (for Quinctius) is important as it implies that Naevius is allowed to take the possession while Quinctius is also the (legal) *possessor*, and, even then, according to Cicero's own words, the legal owner (Cic. *Quinct.* 27.85, continued from above):²⁶

... Quid? Tu id quem ad modum obseruas? Mitto illud dicere, eum, qui non latitarit, cui Romae domus, uxor, liberi, procurator esset, eum, qui tibi uadium non deseruisset; haec omnia omitto; illud dico, dominum expulsum esse de praedio, domino a familia sua manus allatas anto suos Lares familiares; ...

26 Freese 1984, op. cit. (n. 6), 94 n. a discusses a possible difference between Quinctius' ownership expressed by *possideat*, and Naevius' *possideto*, which he interprets as having the property in detention. Detention is described as physical holding of a thing (*tenere, in possessione esse*); full possession needs the physical holding and the intention (*animus possidendi*). See Berger 1953, op. cit. (n. 13), s.v. *Possessio*, 636 f.

Well? how have you observed this order? I say nothing about his being a man who did not keep out of the way, who had a house, a wife, children, and an agent in Rome, who had not forfeited his recognizances—I say nothing about all this; I only say that the owner was ejected from his estate, that hands were laid on the owner by his own slaves in the presence of his household gods. ...

This skilfully designed passage demonstrates once again how Cicero combines both the legal sub-frames and their respective slots which the *missio in possessionem* offer according to the edict and his socio-economic and moral insinuations together. While Quinctius is the one who is not even acting as a *dominus* or with any legally or morally questionable behaviour (as described shortly before), but rather a willing and cooperative person with regard to any legal procedure, Naevius uses violence to eject him from his own(ed) property, even overturning the normally irreversible master-slave(s)-relation which ends in the violation of the *lares familiares*, and is thus also harming the religious core of the family.

This focus on the legal aspects which only secondarily links socio-economic and moral judgments is also very present in the summary of the argumentation (Cic. *Quinct.* 29.88–90), wherein Cicero mainly repeats his legal arguments and ascribes the current situation to the violence, injustice and unevenness of judgment having occurred against his client (§ 90: (*Naevium*) *nihil aliud egisse neque nunc agere nisi uti per vim, per iniuriam, per iniquitatem iudici totum agrum, qui communis est, suum facere possit* / "... that he (sc. Naevius) had, and has, no other object than to enable himself to secure the whole estate (which belongs in common to both), as his own personal property by violence, injustice, and unfair legal procedure").

Hence, it is now the task and duty of the judges to straighten out justice once more. In the last part of the speech, we experience Cicero as we know him from many other speeches. Here, he draws a picture of the innocent, frugal, and good citizen Quinctius and the greedy, violent, and anti-social Naevius who uses his influence, networks and even law and magistrates concerned with juridical matters for his own end. With this behaviour, Naevius is, of course, only a mirror of the evils that have spread in the society like an infection, while Quinctius, and Aquilius (with his assessors), are the last men standing against the fall of the whole Roman society. Thus, bereft of protection of both private and public, he has only one refuge left: Aquilius, his fellow assessors, and their decision (Cic. *Quinct.* 30.91–31.99)

4 Conclusion

Frames and framing are two sides of one coin. Frames help structure our ideas, experiences, and expectations and make us take part in the world, society, and any social interaction. However, they also frame the direction into which we can think, and thus frames become structures that are used in any communication process (consciously or unconsciously) by all sides involved. With regard to forensic oratory, we notice how orators target their respective audience by linking to their (imagined) frames with the attempt to anchor their goals at the slots they regard as manipulable. Cicero was a skilful master in doing so, and *Pro Quinctio* is a representative example. The struggle between his client Quinctius and the opponent Naevius over the protracted dissolution of the business partnership centred on the legal core. At certain moments, both parties tried to “frame” the case in their own favour as both clearly understood the importance and strength of the legal framework in Roman society.²⁷ However, the dynamic negotiation process in front of judicial magistrates as third parties was gradually coming to favour Naevius, especially after the *missio in possessionem* by the praetor Burrienus and the failed negotiation of Quinctius in front of the praetor Dolabella who “framed” a *sponsio praeiudicialis* anew, perhaps to find somehow a final possibility for a compromise between the two parties. Interestingly, in these passages, Cicero clearly follows the strong framework provided by the legal procedure(s), and argues only on a secondary level with common rhetorical *topoi* by contrasting the socio-economic status and morality of the two parties. I have sought to demonstrate that this was due to targeting the specific audience, the judging jurists C. Aquilius Gallus and his fellow assessors whom he thought to convince of his legal interpretation according to the strict sense of the word. That he could do this in a different way became evident in the last part of the speech, wherein Cicero quite typically constructed the world as he viewed it: with Naevius, his supporters, and the pre-judging magistrates as examples of the morally declining society, and he, his client, and, of course, the current judges on the good side of the *res publica* that could only be saved by a brave, and hence just decision, going beyond the mere legal framework.

²⁷ Cf. Tellegen, op. cit. (n. 1), *passim* on how the rhetorical framing of the *causa Curiana* in 92 BCE was based on legal arguments, and not on the opposition between jurists (in this case: Q. Mucius Scaevola) and orators (L. Licinius Crassus).